

**Board for Judicial Administration
Meeting Minutes**

**September 17, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member-Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Ms. Paula Littlewood; Mr. Sal Mungia; Judge Jack Nevin; Justice Susan Owens; Judge Kevin Ringus; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; Judge Dennis Sweeney; and Judge Chris Wickham

Guests Present: Ms. Peggy Bednared, Mr. M. Wayne Blair, Judge Harold Clarke III, Ms. Delilah George (by phone), Judge Steven Gonzalez, Mr. Earl Long, Ms. Shelley Maluo, Ms. Catherine Moore, Judge Christine Quinn-Brintnall, Dr. Arun Raja, and Mr. Kevin Stock

Staff Present: Ms. Colleen Clark, Ms. Vonnie Diseth, Ms. Mellani McAleenan, Mr. Dirk Marler, Mr. Ramsey Radwan, and Mr. Chris Ruhl

Call to Order

The meeting was called to order by Judge Lambo at 9:35 a.m. Those present introduced themselves.

Chief Justice Madsen and Judge Lambo called for an Executive Session and excused everyone that was not a BJA member for approximately 20 minutes. It was clarified that the Executive Session would include all voting and non-voting BJA members.

The general meeting resumed at 10:00 a.m.

August 20, 2010 Meeting Minutes

There was one change to the minutes; Judge Ringus did not attend the meeting.

It was moved by Judge Culpepper to approve the meeting minutes with the one revision of removing Judge Ringus from those present; Judge Wickham seconded. The motion carried.

Legislative Dinners

Ms. McAleenan explained that the legislative dinners are held every two years, prior to the long sessions. These dinners help renew legislative relationships and also introduce the judiciary to new legislators. It is anticipated that dinners this fall will cost approximately \$13,000 and the funds will come from the BJA private checking account; no state monies are used.

Judge Fleck moved to approve the expenditure for these dinners; Judge Dubuisson seconded. The motion carried.

Washington Problem Solving Courts

Judge Harold Clarke introduced a PowerPoint presentation on problem solving courts in Washington; there are approximately 50 drug courts and 18-20 other types of problem solving courts across the state. These include the following: mental health, veterans, drug (adult, juvenile, and family), DUI, homeless, truancy, and DV. Problem solving courts were started in Miami in 1989; in 2009 there were 2,500 drug courts across the United States. Problem solving courts will increase and evolve, they are cost efficient and reduce recidivism.

The Washington State Association of Drug Court Professionals (WSADCP) is a group of judges, prosecutors, drug court coordinators, treatment providers, and other drug court-related professionals that volunteer their time. The DSHS Division of Behavioral Health and Recovery (DBHR, represented by Earl Long), has received a federal grant for strategic planning for drug and other problem solving courts.

Problem solving courts are funded haphazardly. There are some federal grants and some county general fund dollars; counties donate time through judges, prosecutors, etc. There needs to be communication and work with the Legislature to develop consistent funding sources.

Judge Clarke would like the BJA to consider creating a policy statement supporting problem solving courts in the state, similar to the one on water adjudication. He would like to create a draft policy for the BJA to consider.

Judge Fleck expressed interest in seeing a draft policy and suggested including unified family courts, juvenile court evidence-based practices and family and juvenile court improvement programs (FJCIP) in the policy.

Judge Sweeney said that he understands that problem solving courts are here to stay and he has the greatest admiration for the judges involved with them. However, judges are not trained how to treat mental health or other social problems; we are doing these things because no one else is doing them. There are fundamental problems not being addressed by the other branches of government; they are either unwilling or unable to address the psychological, economical and social problems of this population. The courts are not constitutionally set up to deal with these issues.

Chief Justice Madsen said that the BJA Long-Range Planning (LRP) committee discussed this subject at their last meeting on August 31. The draft strategic plan will encourage problem solving courts and their availability throughout counties, including uniform funding. As a procedural matter, the LRP committee would appreciate policy statements as the plan is further developed.

Judge Lambo said that this issue needs further discussion and we should return to it in a couple of months.

Access to Justice Board Resolution

Judge Steven Gonzalez presented the Immigration Enforcement in Washington Courthouses resolution adopted by the Access to Justice Board on June 18, 2010. At this time he is just passing along the information, at some point in the future there may be a request for the BJA to adopt a similar policy to ensure that Washington courts remain open and accessible for all individuals and families.

Judge Gonzalez continued that now he understands how little we, as courts, know about immigration law. The fear people have about coming to court which is also an issue in juvenile court (parents afraid to come in). King County now has a policy that will not allow the enforcement of immigration warrants in the courtrooms. Immigration and Customs Enforcement (ICE) have said they would respect that policy and have put it in writing.

Judge Gonzalez concluded by stressing that education is very important and asked that the BJA include this topic on conference agendas and make time for plenary sessions on immigration.

Proposed WSBA Bylaws

Judge Warning said the Superior Court Judges' Association (SCJA) has concerns about the proposed changes, but they have arrived at an agreement. Both the SCJA and District and Municipal Court Judges' Association (DMCJA) have voted on the formal resolutions of the proposed bylaws and approved them.

Changes include:

- It is voluntary for a judge to pay a fee of approximately \$50 per year to preserve their ability to return to active status upon leaving the bench.
- The requirement to take the bar exam to return to practice has been dropped.
- There are no issues with a retired judge acting as a pro tem.

If a judge does not choose to pay the yearly fee, and if they do decide to return to practice, there is a penalty. They would be charged the active licensing fee for each year of non-compliance. For example, if they were in non-compliance for 10 years and the yearly licensing fee was \$450, they would be required to pay \$4500 to be in compliance.

Judge Warning added that there are two issues which include the language that judges cannot be officers or vote on WSBA committees.

It was clarified that when in judicial status, a judge cannot serve on a standing committee; but they can attend all open committee meetings, but cannot vote. They can serve on task forces and vote; and can also participate in sections unless their bylaws preclude it.

Ms. Moore added that there is a caveat; the Board of Governors has the option to make changes to bylaws before voting on them.

Judge Fleck moved that the BJA support this Bylaw change, Judge Brown seconded. The motion passed with Judge Sweeney opposed and Chief Justice Madsen abstaining.

BJA Public Records Act Work Group Report

Judge Appelwick reported that this work group had eight half-day meetings and AOC staff was a tremendous asset; he thanked Charley Bates, Rick Neidhardt and Beth Flynn for their expertise and assistance. The work group itself had a very diverse membership.

This work group was appointed at a time when it appeared the Legislature might take up the question of whether the judicial branch should be subject to the state Public Records Act (PRA) as a response to the Supreme Court decision in City of Federal Way v. David Koenig.

While the work group did not share a common vision, a consensus was reached. The dissents are expressed in minority reports.

Significant areas of disagreement focused on four areas:

1. Application of PRA vs. court rule.
2. Whether the rule was too protective or too broadly provided for disclosure.
3. Protection of privacy interests of persons whose personal information may be contained in records disclosed.
4. Impacts on small courts.

The work group selected a court rule rather than inclusion within the PRA as the appropriate course. If a court rule is adopted, a best practices committee should be convened quickly to work on establishing a protocol to make it easy to follow in an attempt to minimize problems that might arise.

The decision to present the recommendation in the form of amendments to GR 31 as opposed to a new free standing rule was the decision of the Chair. The proposed rule would apply to all judicial agencies, not just courts. The only controversy with respect to inclusion relates to the WSBA as to its trade association functions. The proposed rule does not apply to the Judicial Conduct Commission.

Judicial branch records are divided into three general categories: case records, chambers records and administrative records.

- Case records continue to fall under existing rules (including appropriate sections of GR 31) and common law.
- New rules are proposed for administrative records which have parallels in the PRA.
- Chambers records are a new category of records excluded from disclosure.

At the October BJA meeting those wishing to speak to minority reports will have a chance to do so, along with a question and answer opportunity. It is anticipated that additional discussion will be held at November's BJA meeting, with action on the report and any proposed amendments at the December meeting.

Chief Justice Madsen expressed the BJA's gratitude to Judge Appelwick, Judge Dubuisson and Judge Culpepper for all their efforts.

GR 29 Work Group

Mr. Hall reported that this was a BJA work group put together with a goal of providing guidance and resources for courts dealing with work-place related employee complaints against judges acting in their administrative capacity (prompted by a Federal Way issue).

Mr. Marler said that this would be a new service from AOC. AOC drafted a proposed charter and looked at resources that would be required to staff the effort. It was determined that it would take 100+ hours of staff time to develop along with funds for traveling – this is just to develop the process. This effort is complicated by known retirements, staffing reductions, possibly more to come, and furloughs. In this fiscal year, it would be very difficult to dedicate the resources to support this activity.

Mr. Hall added that AOC did explore options, but something would have to be stopped in order to free up resources for this; there didn't seem to be any good trade-offs. At this point, the issue concludes with this report.

Open Courts Work Group Report

Judge Quinn-Brintnall reported that this work group was to review existing guidance on court closures.

The work group recommends that an updated letter from the current Chief Justice discussing court closure and the constitutional requirements that courts should remain open except on nonjudicial days be sent to superior courts and courts of limited jurisdiction.

They also agreed that a definition or minimum standards for 'open courts' is not appropriate for a court rule. The committee agreed that access to justice is an important issue and that making a clerk and judge available during open business hours should be a priority matter for all courts.

State Budget Presentation

Dr. Arun Raha, Chief Economist, Department of Revenue, presented an overview of the current economic view of the state.

He began by stating that we have technically been in recovery since August, 2009. It seemed like we were moving forward and it was thought we would be out of the hole in mid-2012. Since then the momentum has stopped and that date has been pushed to the second quarter of 2013.

- The Bureau of Economic Analysis has changed their historical data and the economy is much weaker than thought.
- This is the worst economic situation since the Great Depression and there is no data on that recovery to compare to; we are in the slowest recovery on record.
- Stimulus money is winding down.
- After this recession we will have a group of people who change spending habits forever.
- People are paying down debt, saving more, and not spending.
- Big banks are doing well and community banks are not. The community banks lend to the small businesses; small businesses can't get credit so there is no job growth.

- Consumer confidence – remaining static in recessionary territory.
- Car sales before recession were averaging about 16.5 million nationwide. Last January it was about 9 million, currently about 11.5 million.
- The only growth improvement this year is home remodeling.
- Exports are slightly increasing (airplanes).
- Software, publishing and aerospace are going up slightly in Washington; the first two represent high wage industries.
- Job growth should be at the same rate as the nation, because of high wage industries (above) Washington is probably slightly above the national average.

Chief Justice Madsen and Judge Lambo thanked Dr. Raha for his presentation.

Washington State Bar Association

Mr. Mungia reported that the local rules task force is working with the SCJA; especially with family law issues. He also reported that as of next Friday (September 24), Mr. Steven Toole will become the WSBA President.

Judge Lambo welcomed Mr. Toole to the BJA.

Reports from the Courts

Supreme Court: Justice Owens reported that the court has begun having two-day en banc/administrative meetings.

Court of Appeals: Judge Sweeney reported that they are struggling with budget issues. They are also meeting regularly to discuss the process of developing a long-range plan for the Court of Appeals.

Superior Court Judges: Judge Warning reported that they have started legislative preparation, focusing on funding (Justice in Jeopardy, CASA, etc.). They have already begun meeting with legislators.

Courts of Limited Jurisdiction: Judge Brown reported that the DMCJA met last Friday; they are dealing with a lot of internal issues such as the law fund, public pro bono, funding issues, and difficult budgets.

Association Reports

County Clerks: No report.

Superior Court Administrators: No report.

District and Municipal Court Administrators: Ms. Bednared reported that a special board meeting has been held on the Department of Licensing (DOL) issue. Bi-monthly meetings have been instituted to work with DOL and the Administrative Office of the Courts (AOC). The Board met September 9 in Ellensburg and the Long-Range Planning retreat was held September 14. Discussion included the delivery of education and revamping the DMCMA Web site. Regionals

are being held in October at six locations around the state. Registration has been opened up to the MCA and superior court staff.

Administrative Office of the Courts

Mr. Hall reported that there have been budget issues and that there have been meetings with legislators, mainly to discuss JIS. The feasibility study contract is close to being signed. The Children in Family Services Review reviewed three superior courts across the state; the exit interview will be this afternoon.

There being no further business the meeting was adjourned at 12:25 p.m.